

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 969 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BACHUBHAI SHANKERLAL DARJI

Versus

PATEL GHANSHYMBHAI HIRABHAI

Appearance:

MR VC DESAI for Appellant
(MR GR UDHWANI) for Respondent No. 1
MR KT DAVE, APP for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 23/03/98

ORAL CAV JUDGEMENT

This appeal under Sec.378 of Code of Criminal Procedure, 1973, is directed against the order of acquittal recorded by the ld. Judicial Magistrate (First Class), Kadi on 29.11.1989 in Criminal Case No. 1261/86 pending on his file.

It has been contended by the appellant- original

complainant that the ld. Magistrate has erred in acquitting the accused though there was sufficient evidence to hold him guilty of the offences punishable under Secs. 279, 337 and 338 of the I.P.Code and Secs. 112 and 116 of the Motor Vehicles Act (Old.).

Mr. VC Desai, ld. Advocate appearing for the appellant has submitted that the ld. Magistrate has erred in appreciating evidence and only because the complaint was filed at the belated stage, ld. Magistrate ought not to have held that the complaint is doubtful. It has been further contended that through the witnesses examined by the prosecution were independent, their presence on the place of the accident at the relevant time is wrongly held to be doubtful. According to Mr. Desai, the ld. Magistrate ought to have considered properly the medical certificate exh.31 wherein it has been stated that the injured has approached Dr. Shailesh Dave- Orthopedic Surgeon with the history of vehicular accident.

I have gone through the record and proceedings of the case. I have gone through the relevant evidence of the witnesses. When certain queries were put before the ld. Advocate Mr. Desai, appearing for the appellant about the infirmities in the appreciation of the evidence by the ld. Magistrate, Mr. Desai has to concede fairly that there is no infirmity in appreciation of evidence by the ld. Magistrate. The ld. Magistrate has assigned cogent and convincing reasons for holding the complaint as doubtful on account of filing thereof at a belated stage inasmuch as though the accident took place on 1.4.1986, the complaint came to be filed on 30.7.1986. No reasonable and plausible explanation is tendered for the late filing of the complaint. Likewise, the presence of the prosecution witnesses on the place of accident at the relevant time is also very much doubtful. Both the witnesses appear to be interested witnesses and cannot be termed as independent witnesses. There is no patent and inherent infirmity in acquitting the accused by the ld. Magistrate. I am in complete agreement with the view taken, reasons given and findings arrived at by the ld. Magistrate and there are no cogent and convincing reasons to take the view different than the one taken by the ld. Magistrate. In view of the settled legal position as enunciated by the Supreme Court in the case of State of Karnataka v/s Hemareddy, reported in AIR 1981 SC 1417, I am not discussing the evidence of each witness in detail.

In the result, appeal fails and is hereby dismissed. The impugned order of acquittal passed by the

ld. Magistrate is hereby confirmed.

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